

UNITED KINGDOM



1. INTRODUCTION

a. Forms of Legal Entity

The main types of entities that exist in the UK, and their key features are:

- ❖ A private company limited by shares: The members' liability is limited to the amount, if any, unpaid on the shares held by them.
- ❖ A private company limited by guarantee: The company does not have a share capital. Instead the members' liability is limited to the amount that they have agreed to contribute to the company's assets if the company is wound up.
- ❖ A private unlimited company: There is no limit to the members' liability. This form of company is rare.
- ❖ A public limited company: The members' liability is limited to the amount, if any, unpaid on the shares held by them. Only a public limited company can offer its shares to the general public.
- ❖ Partnership: A relationship whereby two or partners carry on business together. The partnership does not have separate legal personality, is fiscally transparent and the partners are responsible for its debts.
- ❖ Limited Partnership: Similar to a partnership but partnership liabilities can be allocated to specific partners such that limited partners have limited liability and residual liabilities fall on the general partner.
- ❖ Limited Liability Partnership: A partnership where partners are not personally liable for debts and liabilities of the partnership. It has separate legal personality but is still fiscally transparent.

b. Taxes, Tax Rates

i Corporations

❖ Corporation Tax

The Corporation Tax rate for company profits, for the 2019/20 and 2020/21 fiscal tax year, is 19%.

From the 2023/24 fiscal year, the rate of Corporation Tax will increase to 25%. Businesses with profits of £50,000 or less, will continue to be taxed at 19%. A tapered rate will also be introduced for profits above £50,000, so that only businesses with profits of £250,000 or greater will be taxed at the full 25% rate.

❖ Capital Gains

Capital gains realised by companies are subject to tax at the standard corporation tax rate.



ii Individuals

Income tax

The UK follows a progressive based tax system for UK taxpayers. In the 2020/21 UK tax year (figures which remained identical from the 2019/20 UK tax year), the standard personal allowance given, is £12,500 which is the amount of income that you do not have to pay any tax on. With income over £100,000, the personal allowance is tapered down by £1, for every £2 additional over £100,000.

Income between £12,501 and £50,270, is taxed at the basic rate band of 20%. Income between £50,001 and £150,000, is taxed at the higher rate of 40%. Any taxable income that falls over this amount is taxed at 45%.

As announced at Budget 2021, the government will maintain the Personal Allowance at £12,570 and higher rate threshold at £50,270 for 2022/23, 2023/24, 2024/25 and 2025/26. The additional rate threshold is fixed at £150,000. The NICs Upper Earnings Limit and Upper Profits Limit will remain aligned to the higher rate threshold at £50,270 for these years.

Capital Gains Tax

Capital gains tax realised by individuals is generally taxed at a rate of 20% unless related to residential property, taxed at 28%, or carried interest which is taxed at a minimum of 28% subject to specific rules which should be considered on a case by case basis.

c. Common divergences between income shown on tax returns and local financial statements

The main source of profits is often from trading. A company's trading profits are based on its worldwide profit before tax in its accounts. Adjustments are made for non-trading receipts (such as dividends from other companies and income from property) and non-deductible expenditure (such as capital expenditure). Depreciation for tax purposes (known as capital allowances) is calculated and substituted for the depreciation charged in the accounts. A number of other statutory adjustments are made; three important differences are that pension contributions, deferred pay and benefits in kind are broadly deductible only when paid, that a deduction is available for the notional cost of certain share awards to employees, and that, where certain acquired intangibles.

From 1 April 2019, where goodwill has been acquired from a third party as part of a business purchase in which qualifying intellectual property is also purchased, corporation tax relief will be available at a fixed rate of 6.5% per annum on the value of the goodwill acquired, subject to a cap of 6 times the value of the qualifying intellectual property purchased.

Similar principles apply in relation to the calculation of profits of a property business.

Financial profits from a company's trading and non-trading loan relationships and related matters are usually based on the accounts and the distinction between 'capital' and 'revenue' receipts and deductions is not relevant. Instead, all credits and debits in the accounts are aggregated to find the net profit or deficit. Certain statutory adjustments must be made, which include an interest capping limitation.

For traders, any profit or loss on loan relationships, and/or on intangibles, is generally included within the trading profits. If the company does not have a trade, then loan relationships and intangibles are treated as a separate source of income or loss.



2. RECENT DEVELOPMENTS

The main developments in the UK relevant to M&A transactions are the continued implementation of the BEPS actions into domestic legislation. The UK is generally supportive of the BEPS actions and has already issued legislation. The UK tax authority ("HMRC") has introduced new legislation in the following areas:

Very large companies (broadly with profits exceeding £20m in an accounting period) will have to pay corporation tax by instalments four months earlier for accounting periods commencing on or after 1 April 2019. Corporation tax will be due in months three, six, nine, and twelve.

The most significant proposals, which include announced proposals, those in draft legislation and those subject to consultations include:

- ❖ The rate of corporation tax is 19% from April 2020, and will increase to 25% from 1 April 2023.
- ❖ The amount of qualifying investment in plant and machinery that benefits from a 100% allowance was £1 million where the expenditure is incurred from 1 January 2019 to 31 December 2020. This 100% allowance is reduced to £200k from 1 January 2021.
- ❖ For qualifying expenditure incurred from 1 April 2021 up to and including 31 March 2023, companies can claim in the period of investment:
 - i) a first year allowance of 50% on most new plant and machinery investments that ordinarily qualify for 6% special rate writing down allowances.
 - ii) a super-deduction providing allowances of 130% on most new plant and machinery investments that ordinarily qualify for 18% main rate writing down allowances. The super-deduction will allow companies to cut their tax bill by up to 25p for every £1 they invest.
- ❖ The rate of capital allowance on special rate expenditure (for instance, integral features) is 6% in 2020/21.
- ❖ A Structures and Buildings Allowance of 3% (2% prior to April 2020) may be available for qualifying investments to construct new, or renovate old, non-residential structures and buildings.
- ❖ A 100% first year allowance may be available on certain energy efficient plant and cars.
- ❖ Losses: The government announced a temporary extension to the carry back trade losses of up to £2 million from one to three years for trade losses for a period of two years.

International matters

In June 2016, the European Union adopted an anti-tax-avoidance Directive (ATAD), which sets out minimum standards for rules to address key international tax and BEPS-related issues: (i) deductibility of interest, (ii) exit taxation, (iii) a general anti-abuse rule (GAAR), (iv) controlled foreign company (CFC) rules, and (v) a framework to tackle hybrid mismatches. The United Kingdom already has rules covering each of these areas but has introduced limited amendments to the CFC and exit charge rules to ensure they are compliant with this minimum standard.

Gains on non-resident direct disposals and certain indirect disposals of UK property will be brought within the scope of UK tax. This applied to gains accrued on or after April 2019. Targeted exemptions will be introduced for institutional investors, such as pension funds.

New rules from April 2019 to prevent companies and individuals from moving profits offshore (tax avoidance involving profit fragmentation).



From April 2020, income that non-resident companies receive from UK property, and gains that arise on the disposal of UK property by non-resident companies, will be chargeable to corporation tax.

From April 2020, a new digital services tax of 2% will apply to the revenues of certain digital businesses to reflect the value they derive from the participation of UK users, pending an appropriate international solution. The tax will apply to annual 'UK' revenues above £25 million from activities relating to search engines, social media platforms and online marketplaces.

COVID-19

As a result of the Covid-19 pandemic and its impact on the UK economy, the UK Government has continually announced a series of measures to support the economy on a macroeconomic and microeconomic level. The tax and support measures announced are outlined at a high level below:

i VAT

VAT payments due between 20 March 2020 and 30 June 2020 can be deferred on an optional basis and applies to all UK VAT registrations.

Import VAT & Duty deferrals: HMRC will permit a full or partial payment extension on import VAT and duty normally due for those with a duty deferment account on 15th of the month following import without having their guarantee called upon or their deferment account suspended.

Additional direct tax, payroll tax and VAT deferrals: If the VAT deferral offered above is not sufficient and if the business needs additional time to pay all taxes, HMRC has extended its "Time to Pay" helpline. Businesses can request deferrals for VAT (outside the above period), payroll taxes and direct tax.

From 15 July 2020, the government introduced a temporary 5% reduced rate of VAT for certain supplies of hospitality, hotel and holiday accommodation, and admissions to certain attractions. On 24 September 2020, this reduced rate was extended until 31 March 2021. The government announced at the 2021 budget an extension to the 5% reduced rate of VAT until 30 September 2021, which will be followed by a 12.5% VAT rate for a further six months until 31 March 2022.

ii Postponement of IR35

The reform to the off-payroll working rules in the private sector (commonly known as IR35), which will affect large or medium-sized organisations that engage with contractors through an intermediary, was delayed for one year, from 6 April 2020 until 6 April 2021.

iii Postponement of phase 2 of Making Tax Digital

Second phase ('digital links') of Making Tax Digital for VAT ('MTD'), initially scheduled for April 2020, has been delayed one year and will come into effect on 1 April 2021.

iv Coronavirus Job Retention Scheme

The CJRS is available to all UK employers to enable them to access support to cover a proportion of employees' salaries, where the employee has been furloughed as a result of this crisis. The scheme first became available in March 2020 and has been extended and updated a number of times since. The current iteration of the CJRS runs from 1 November 2020 until 31 September 2021, and allows employers to claim 80% of eligible furloughed employees' current salary for hours not worked, up to a maximum of £2,500 per month. From July 2021, the amount of support will be tapered down to 70% of wages and then 60% from August.



v Sick pay

Eligible businesses with less than 250 employees may be able to claim a refund of 2 weeks Statutory Sick Pay ('SSP') per employee who has been off sick due to Covid-19.

vi Self-employed individuals

Eligible self-employed individuals, whose trading profits are significantly reduced as a result of Covid, may be able to claim up to 80% or £2,500 a month cash grant, provided all of the relevant criteria are satisfied, including the requirement to have trading profits less than £50,000 per year. This scheme has also been extended a number of times and the current version has been extended to 30 June 2021.

From July the government will introduce a fifth and final grant which will be calculated on a different basis, based on the reduction of turnover in the claimant's business in the year from April 2020 to April 2021. For a turnover reduction of 30% or more, the grant will remain at 80% of the three months average trading profit (capped at £7,500). For a turnover reduction of less than 30%, the grant will be 30% of the three months' average trading profit (capped at £2,850 in total). Eligibility will now be based on tax returns submitted for the 2019/20 tax year.

vii COVID-19 Corporate Financing Facility

The Bank of England will buy short term debt from large companies. This will support companies which are fundamentally strong, but have been affected by a short-term funding squeeze, enabling them to continue financing their short-term liabilities. It will also support corporate finance markets overall and ease the supply of credit to all firms.

viii Government Grants for businesses

One-off grant of £10,000 (about €11,000) to business that pay little or no business rates; Additional grant of £25,000 (about €27,000) to retail, hospitality and leisure businesses. This measure applies to businesses operating from smaller premises, with a rateable value between £15,000 and £51,000 (about €16,000 to €55,000).

- ❖ DAC6 : HMRC announced on 31 December 2020 that reporting under DAC6 would only be required for arrangements that meet hallmarks under Category D. Category D is a specific hallmark concerning automatic exchange of information and beneficial ownership. Regulations were made with effect from 31 December 2020 to implement this change and to ensure that the rules work correctly after the end of the transition period. The reporting requirements under Hallmarks A, B, C and E have been repealed.

ix Coronavirus Business Interruption Loan Scheme

- ❖ The Government will provide, through the British Business Bank, free of charge to SMEs an 80% guarantee on each loan for borrowings up to £5 million (about €5.5 million) and for up to 6 years. The government will also make a Business Interruption Payment to cover the first 12 months of interest payments and any lender-levied fees, so smaller businesses will benefit from no upfront costs and lower initial repayments. The government will provide lenders with a guarantee of 80% on each loan (subject to pre-lender cap on claims) to give lenders further confidence in continuing to provide finance to SMEs. The scheme will be delivered through commercial lenders, backed by the government-owned British Business Bank. There are 40 accredited lenders able to offer the scheme, including all the major banks.



x Coronavirus Large Business Interruption Loan Scheme (“CLBILS”)

CLBILS will support large businesses, with an annual turnover of over £45 million, to access loans of up to £25 million. Previously the scheme was intended to exclude companies that have a turnover in excess of £500 million. The scheme is expected to be delivered through commercial lenders. The government will provide lenders with an 80% guarantee on individual loans for businesses that would otherwise be unable to access the finance they need. Facilities backed by a guarantee under CLBILS will be offered at commercial rates of interest.

xi Recovery Loan Scheme

The government are making available loans between £25,001 and £10 million, and asset and invoice finance between £1,000 and £10 million, to help businesses of all sizes through the next stage of recovery.

xii Funding

The government are providing £5 billion for new Restart Grants – a one off cash grant of up to £18,000 for hospitality, accommodation, leisure, personal care and gym businesses in England.

xiii Business Rates

For the fiscal year 202/21, businesses in the retail, hospitality and leisure sectors in England will not have to pay business rates. This relief was extended to 30 June 2020. From July 2021, business rates relief will be reduced from 100% to 66% until March 2022. To be eligible, businesses must have been affected by the third national lockdown. Qualifying companies will be those which were required to close on 5 January 2021.

3. SHARE ACQUISITION

a. General Comments

The purchase of shares means that the purchaser acquires the entire company. This includes all assets and all liabilities including any historical liabilities.

b. Tax Attributes

Trade tax losses incurred prior to 1 April 2017 and carried forward should generally be available to be used against future taxable profits of the same trade in the entity which incurred the tax losses.

Trade tax losses incurred after 1 April 2017 may be carried forward and set-off against future taxable profits of different activities within a company and its UK group companies. Following a change in ownership any pre-acquisition carried forward losses (incurred after 1 April 2017) in the acquired company cannot be group relieved against the profits of companies in the acquiring group (i.e entities which were not part of its pre-acquisition group) for a period of five years.

Where the group's taxable profits exceed £5m, the amount of annual profit that can be relieved by carried forward trade losses will be limited to 50% of the group's profits.

Carried forward trade losses may be forfeited following a change of ownership under UK anti-avoidance rules where there is a change in ownership and either:



- ❖ There is a major change in the nature or conduct of the company's trade within a period of 5 years, beginning no later than the change in ownership and no earlier than 3 years before change in ownership; or
- ❖ The change of ownership occurs at any time after the scale of the company's activities has become small or negligible and before any significant revival of its trade.

Where the above applies, losses arising before the change in ownership will not be allowed to be offset against profits after the change of ownership. Change of ownership restrictions also apply to non-trade tax losses.

Broadly, there is a change in ownership of a company where more than half of its ordinary share capital changes hands.

c. Tax Grouping

The UK does not have a fiscal unity or consolidated group tax regime. The basic UK corporation tax rules operate on a company by company basis. However, a system of group relief applies to companies in a group whereby one member of the group can surrender these losses to another member of the group, which can deduct the loss from its total profits, thus reducing the amount of corporation tax payable.

d. Tax Free Reorganisations

UK tax legislation contains provisions that enable a tax-neutral reorganisation, these include:

- ❖ The ability to transfer assets of a trade, together with accumulated losses, within a group without a charge to tax.
- ❖ The tax neutral transfer of assets within a group under the chargeable gains regime.
- ❖ Tax free share-for-share exchanges provided certain conditions are met.
- ❖ Group relief provisions for stamp duty and stamp duty land tax.
- ❖ Group provisions for reorganisations that take place within a VAT group.

When considering a group reorganisation post-acquisition, care needs to be taken with regards to future de-grouping charges that may apply if the company is sold outside the group within a period of 6 years. There are also stamp duty and stamp duty land tax relief claw back provisions that apply for a period of 3 years.

e. Purchase Agreement

The purchase agreement will typically contain tax warranties and a tax indemnity. It is usual practice for a purchaser to perform a due diligence exercise on the target company, the result of which would be reflected in the tax warranties and indemnities.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

Transfer taxes take the form of stamp duty, which is equivalent to 0.5% duty, which will be rounded up to the nearest £5. Transfers will need to be documented through a stock transfer form, which must be sent to the 'Stamp Office' no later than 30 days after the transaction has taken place.



g. “Purchase Accounting” applicable to share acquisitions

Purchase price accounting applies in the UK following IFRS or UK GAAP. However, it is not possible to obtain an uplift in the tax basis of assets acquired within corporate entities.

h. Stock Purchase Advantages

- ❖ Beneficial tax reliefs on share sales – There are various beneficial capital gains tax reliefs on a sale of shares. For corporate sellers the main exemption is the Substantial Shareholding Exemption (“SSE”). SSE generally applies to exempt a gain where there is a holding of more than 10% of shares in a trading company or group. For individual shareholders the main benefit is Entrepreneurs Relief which may apply to reduce the tax rate to 10% for the sale of shares in trading companies where the individual holds a 5% interest.
- ❖ No double tax charge – There is a potential double tax charge on an asset sale which can result in the seller being taxed twice, once on the gain made from the sale of the assets and again when the sale proceeds are distributed. The selling company may suffer corporation tax on chargeable gains that arise on the sale of the assets. The shareholders in the selling company may then pay income tax on dividends paid out of any profit that is made from the sale of assets.
- ❖ Roll-over relief – A share sale should enable the seller to defer tax on chargeable gains to the extent that the consideration takes the form of shares or loan notes in the buyer. This is not possible on an asset sale, although similar relief is available on an asset sale if the proceeds are reinvested by the seller in certain qualifying replacement assets. In each case, the effect of the relief is to defer tax on any gain until the subsequent sale of the consideration shares, loan notes or replacement assets.
- ❖ No capital allowances balancing charges – A single chargeable gain will arise on a share sale. On an asset sale, the sale of each category of asset will have different tax consequences. For example, the disposal of certain assets in respect of which capital allowances have been claimed could trigger a balancing charge for the seller. This could be the case if the particular asset or, in the case of pooled assets, the asset pool, is sold for more than its tax written down value as the excess is treated as taxable trading income.
- ❖ Losses – Brought forward losses in a company would transfer with a share sale (subject to anti-avoidance legislation).

i. Stock Purchase Disadvantages

With a stock purchase, the purchaser inherits all the historical liabilities of the company, including tax liabilities.

There is no opportunity to get increased tax basis in the assets acquired within the company.

4. ASSET ACQUISITION

a. General Comments

Generally, assets sales are less common primarily due to the capital gains exemptions referred to above and the inability to transfer losses.

b. Purchase Price Allocation

Generally, the purchase price allocation for tax purposes follows the allocation made between the parties in the asset purchase agreement.



c. Tax Attributes

Tax attributes do not generally transfer with an asset purchase.

d. Tax Free Reorganisations

It is possible to hive down trade and assets to a new company in order to affect a share sale and potentially benefit from the Substantial Shareholding Exemption.

e. Purchase Agreement

As there is not a transfer of historical liabilities with an asset acquisition, there is usually significantly less tax content in the purchase agreement

f. Depreciation and Amortisation

Amortisation arising on the acquisition of all goodwill or customer related intangibles (including those arising from an asset acquisition) is not deductible for corporation tax purposes. However, there may be a limited opportunity to amortise goodwill on an asset acquisition where the goodwill is acquired together with other items of qualifying intellectual property.

g. Transfer Taxes, VAT

Where a trade is transferred as a going concern the transfer should be exempt from VAT. Otherwise VAT may be charged on the items transferred.

h. Asset Purchase Advantages

- ❖ In asset deals, purchasers can choose the assets they want and leave any known or unknown liabilities behind.
- ❖ There is also greater scope for immediate and future tax deductions. For example, the acquisition of stock and assets that qualify for capital allowances and certain IP would typically qualify for tax deductions. Further, certain assets purchased may qualify for rollover relief so a purchaser can defer other gains into these acquisitions.
- ❖ There are potentially higher base costs in assets acquired for capital gains tax purposes. Broadly the tax basis of each relevant asset will be the amount paid for it.
- ❖ The purchase of assets may qualify as a transfer of a going concern and, as such, VAT need not be accounted for on the sale.

i. Asset Purchase Disadvantages

- ❖ An asset deal is often less attractive for vendors than a share deal because of the potential double tax charge for shareholders and inability to access capital gains tax exemptions available on share transactions.
- ❖ Any brought forward losses would remain with the vendor.



5. ACQUISITION VEHICLES

a. General Comments

The choice of acquisition vehicle generally depends upon how the acquisition is being financed and the future plans for exit and repatriation of cash.

b. Domestic Acquisition Vehicle

A domestic acquisition vehicle is commonly used as it can be leveraged and the interest expense offset against the profits of the acquired entity under the group relief regime described earlier.

c. Foreign Acquisition Vehicle

Foreign acquisition vehicles cannot form a group with a UK target company and so there would be no opportunity to get tax relief on any acquisition debt. A foreign vehicle may be used in order to facilitate a capital gains tax free exit where it is expected the UK exemptions would not apply. Also, the sale of shares on a foreign company, holding UK shares, would not be subject to UK Stamp Duty.

d. Partnerships and joint ventures

Partnerships are rarely used as acquisition vehicles due to their transparent nature.

e. Strategic vs Private Equity Buyers

A strategic buyer would usually be more concerned with holding the asset for a long period of time and integrating within its existing group. Therefore, it would be less concerned with designing a structure for efficient capital gains tax exit. Also, a strategic buyer is more likely to have an existing financing structure in place rather than a private equity buyer, who would likely implement for each transaction.

6. ACQUISITION FINANCING

a. General Comments

The UK is a liberal jurisdiction with a well-developed legal and banking system and so a favorable jurisdiction in which to raise finance.

b. Equity

The UK does not levy withholding tax on dividends and does not levy capital gains tax on foreign shareholders. Therefore, UK tax does not usually dictate jurisdictions for holding equity in UK companies.

c. Debt

i Limitations on use of debt

Related party debt is subject to transfer rules and interest is only deductible on related party debt if the quantum of debt and rate of interest is on arm's length terms. There are no safe harbour provisions in the UK. In respect of debt, the definition of related parties is extended to include parties who 'act together' in the provision of finance.



ii Limitations on interest deductions

In addition to transfer pricing rules mentioned above, the UK introduced a new regime with effect from 1 April 2017 that restricts the tax deductions that are available for interest expense based on the higher of: (i) 30% of the UK group's tax-EBITDA, or (ii) group ratio based on the actual net third party interest to EBITDA ratio for the worldwide group. There is £2million de-minimus limit. This rule implements BEPS Action 4 recommendations.

UK tax legislation also contains anti-avoidance provisions that can deny interest deductions where the loan is deemed to have been borrowed for unallowable purposes (which broadly mean that the loan was obtained to secure a tax advantage).

iii Debt-Pushdown

Typically, from a UK standpoint in order to push down debt on an acquisition, a new UK holding company is established and leveraged to carry out the acquisition so interest on the debt can be relieved against the target company's profits under the UK's group relief provisions. Broadly UK companies can surrender profits and losses within a group providing that a common parent holds at least 75% of the ordinary share capital.

It may also be possible to borrow to finance distributions from the Target company although this would need more careful consideration in respect of anti-avoidance provisions.

d. Hybrid Instruments

As the UK has extensive anti-hybrid legislation, hybrid financing instruments are rarely used.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

Generally, earn-out payments are taxed effective from the date of disposal of the shares. Where the earn-out consideration is contingent and unascertainable at the date of the disposal it is taxed at a later date, when received.

Earn-outs usually require careful attention in respect of individual recipients to determine whether the earn-out can be re-classified as employment income.



7. DIVESTITURES

a. Tax Free

There is a substantial shareholding exemption (“SSE”) from CGT where shares are disposed of by a company in certain circumstances. Generally for the SSE to apply:

- ❖ The parent of the disposing entity would need to hold at least 10% of the ordinary share capital of the disposed entity for a continuous 12 month period beginning not more than six years before the date of disposal; and
- ❖ The disposed entity would need to be a trading company or the holding company of a trading sub-group.

A trading company is generally a company where no more than 20% of its activity or assets relate to non-trading items, such as holding investments.

b. Taxable

The current rate of UK CGT is 20%. The charge to CGT applies to individuals, trusts, unincorporated bodies and companies in the case of development land gains. Companies resident in UK are taxed on chargeable gains but the tax falls under its corporation tax liability.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

The UK operates a worldwide system of taxation.

b. CFC Regime

The controlled foreign company regime (CFC) applies to companies resident outside the UK that are controlled by UK residents.

The purpose of the CFC regime is to prevent the artificial diversion of profits from the UK through the use of a non-UK resident company controlled by a UK-resident person or persons. A CFC charge is made by apportioning the profits of a CFC to UK resident companies which have an interest in the CFC.

The current CFC regime applies for accounting periods beginning on or after 1 January 2013. The old CFC regime, which applied before this date, is not dealt with in this guide.

What is a CFC?

A CFC is a non-resident company controlled by a UK-resident person or persons. For these purposes, a person (P) controls a non-UK resident company (C) if at least one of the following conditions are met:

- ❖ P has the power to secure that the affairs of C are conducted in accordance with P's wishes;
- ❖ P has rights over 50% of the proceeds which would be received on the disposal of C or over C's income or assets; and
- ❖ P is C's parent and if, assuming that the CFC charge is made, at least 50% of C's chargeable profits would be apportioned to P.



In addition, a company which would not otherwise be a CFC is taken to be a CFC where a UK-resident person and a non-UK resident person, taken together, control the company and a 40% test is met. The 40% test will be met where the UK resident controller has at least 40%, and the non-UK resident controller has between 40% and 55% of the interest, rights and powers in respect of which the controllers are taken to control the CFC.

The CFC charge

The charge is applied by apportioning the CFC's chargeable profits and creditable tax to the UK resident companies which have a significant interest (at least 25%) in the CFC. In most cases, the apportionment is made in proportion to the shareholdings in the CFC. The charge is restricted to those profits of the CFC which pass through the CFC charge 'gateway'. No charge is made under the CFC rules if an exemption applies with regard to the CFC.

The CFC charge gateway

The CFC charge gateway is effectively a series of definitions of profits that may fall within the CFC regime. Profits that pass through the CFC charge gateway are profits that have been artificially diverted from the UK. A CFC charge can only arise to the extent that profits pass through the gateway.

Exemptions

Even if some or all of the CFC's profits pass through the gateway, no charge will be made if one of the following exemptions applies:

- ❖ the exempt period exemption. This is a temporary exemption for CFCs coming within the rules for the first time as a result of an acquisition or reorganisation;
- ❖ the low profits exemption. A CFC with profits of £50,000 or less (or £500,000 or less where non-trading income is no more than £50,000) will avoid an apportionment;
- ❖ the low profit margin exemption. This exemption will apply where the CFC's profits are no more than 10% of its operating expenditure;
- ❖ the tax exemption. The tax exemption applies where the tax paid by the CFC in its territory of residence is at least 75% of the corresponding UK tax. This exemption is not available where the foreign tax is paid under designer rate provisions;
- ❖ the excluded territories exemption. No CFC charge will be made if the CFC is resident in an excluded territory and if certain conditions relating to its income and intellectual property are met.

c. Foreign branches and partnerships

Companies carrying on a trade in another territory through a foreign branch include the branch results in their corporation tax return. Relief is given for any foreign tax as a credit against UK tax.

Alternatively, on making an election, a UK large or medium sized company will be exempt from UK tax in respect of future profits and losses of all its non-UK branches, except for some branches located in tax havens. The exemption for companies that are small will be restricted to branches located in territories with which the UK has a comprehensive double tax agreement.



d. Cash Repatriation

Distributions paid by a UK or overseas company to a UK resident company are chargeable to corporation tax on the recipient unless the distribution is exempt. A distribution is exempt if it falls within any of the following classes: Distributions from controlled companies, distributions from portfolio holdings, transactions not designed to reduce tax and distributions in respect of shares accounted for as liabilities. Each class is subject to specific anti-avoidance clauses. These classes usually cover most distributions.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of “Real Property-Rich” Corporations

Historically, non-UK resident investors could structure their arrangements so that they would be outside the scope of UK tax on UK property. Legislation was introduced from 6 April 2019. The key changes are that from 6 April 2019:

- ❖ disposals of interests in both residential and commercial property will be within the UK's tax base;
- ❖ persons previously able to elect out of charge (such as diversely-held companies and widely-marketed funds) will now be liable on all disposals of UK land, and
- ❖ there will be a new charge for non-residents' gains on disposals of indirect interests in UK property (such as selling the shares in a company that derives 75% or more of its gross asset value from UK land).

The rate of CGT will be 20%. Non-resident CGT returns must be filed, and the tax paid, within 30 days of completion of the disposal. All non-resident companies will now pay corporation tax on their gains and should file a company tax return in the usual way.

b. CbC and Other Reporting Regimes

The UK has implemented the Country by Country reporting regime, for groups with a turnover of more than €750m.

Entities falling within CbC should inform HMRC:

- ❖ The name of the entity making the filing
- ❖ That entity's unique tax reference number, and
- ❖ The territory where filing will be made.

Only one notification is required for group entities within the UK, so one company may file the notification and include details (the names and tax reference numbers) of the other relevant UK entities.



10. TRANSFER PRICING

The UK has transfer pricing documentation legislation. The minimum requirement to satisfy this is by maintaining evidence that transactions meet the arm's-length standard.

There is an exemption from the application of transfer pricing rules for small and medium-sized enterprises (SME). The exemption applies only to transactions with territories for which there is a full non discrimination article in the relevant treaty.

There is no statutory deadline for preparation of transfer pricing documentation. Evidence to demonstrate an arm's-length result would need to be made available to HMRC in response to a legitimate and reasonable request related to a tax return. If such a request is made, it is reasonable to assume 30 days to respond to it or such other time as mutually agreed upon.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities and instruments

As part of the United Kingdom's ongoing commitment to the OECD's Base Erosion and Profit Shifting (BEPS) initiatives, new legislation was enacted in the Finance Act 2016 containing provisions to remove tax mismatches arising from the use of hybrid financial instrument and hybrid entities. Broadly, a tax mismatch arises where a double deduction is being claimed for the same expense (the double-deduction outcome) or a deduction is being claimed for an expense without the corresponding receipt being fully taxed (the deduction/ non-inclusion outcome).

The rules will impact a wide range of structures, most typically those involving entities which are treated as opaque in the country of incorporation but transparent for the investor or parent entity, for example US parented groups where UK subsidiaries are disregarded by election for US tax purposes. Certain arrangements involving PEs and dual resident entities will also be affected.

Other structures affected will include those where financial instruments have been entered which may be treated as debt for the paying entity but equity for the payee, thereby generating an interest deduction with no corresponding taxable income for the investor or parent entity.

b. Principal/Limited Risk Distribution or Similar Structures

It is possible to structure UK business operations within the limited risk distribution model. However, it is essential that the transfer pricing rules are adhered to.

c. Intellectual Property

Patent Box

The Patent Box enables companies to apply a 10% rate of Corporation Tax to profits earned from its patented inventions.

To benefit from the Patent Box your company profits must be from exploiting patented inventions that are owned and on which qualifying development has taken place. If your company is a member of a group, it may qualify if another company in the group has undertaken the qualifying development.



R&D Tax Credit

R&D reliefs support companies that work on innovative projects in science and technology. R&D tax credits can be claimed on projects which are designed to make an advance in science or technology.

For small and medium sized companies, SME R&D relief allows companies to:

- ❖ deduct an extra 130% of their qualifying costs from their yearly profit, as well as the normal 100% deduction, to make a total 230% deduction, and
- ❖ claim a tax credit if the company is loss making, worth up to 14.5% of the surrenderable loss

The Research and Development Expenditure Credit (“RDEC”) is available to large companies. The company’s qualifying expenditure generates a 13% credit which is taxable. The credit is also creditable against the company’s tax liability. If the company is loss making the credit can be claimed as a cash payment.

d. Special tax regimes

This section is left intentionally blank.

12. OECD BEPS CONSIDERATIONS

The UK government successfully helped initiate the G20-OECD BEPS project and worked with G20 and OECD partners to bring this to a successful conclusion in October 2015 and deliver the 2015 Final Reports. The UK’s objective has been to ensure that profits are taxed where the economic activity generating them takes place.

In 2014, the UK was one of the first countries to implement the OECD country-by-country reporting template, which will improve transparency of business to tax authorities. The UK continues to be one of the leading countries pushing the BEPS agenda and in some cases, has adopted stricter measures than anticipated.

Action 6 lays down requirements for the availability of treaties to be limited to situations where a ‘principle purpose test’ (“PPT”), based on the transactions or arrangements, is met. The PPT can be separately supplemented by a ‘limitation on benefit’s’ (“LOB”) rule which limits treaty benefits to persons who meet certain conditions. The UK will adopt the PPT through the multilateral instrument (“MLI”)but will not seek to include the supplementary LOB provisions.

Action 15 of the OECD’s BEPS project recommended the development of a MLI to allow countries to swiftly modify their bilateral treaties to implement tax treaty related measures developed as part of the BEPS work. The UK signed the MLI in June 2017.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

IFRS 3 *Business Combinations* outlines the accounting when an acquiror obtains control of a business (e.g. an acquisition or merger). Such business combinations are accounted for using the ‘acquisition method’, which generally requires assets acquired and liabilities assumed to be measured at their fair values at the acquisition date.

b. Divestitures

Divestitures are generally accounted for based on the actual value of the transaction.



14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Distributions may only be made from a company's distributable reserves. Distributable reserves is a legal concept and is defined as the company's accumulated realised profits less accumulated realised losses.

Where a company does not have sufficient distributable profits, it may be undertake a capital reduction in order to reduce shares capital and create distributable reserves. Strict legal steps need to be followed.

b. Substance Requirements for Recipients

As the UK does not levy withholding tax on distributions and does not levy non-resident capital gains tax, substance considerations have been less relevant than for other jurisdictions. In respect of substance required for treaty claim for reduced withholding tax on interest payments, historically the main issue was whether the recipient had beneficial ownership of the income. However, now the UK has implemented the MLI, those principals will apply.

c. Application of Regional Rules

Following Brexit from 1 January 2021, the UK has moved out of the transition period into a new relationship governed by the Trade and Cooperation Agreement. The UK has now lost the benefit of the EU Parent-Subsidiary Directive and the Interest and Royalties Directive. Group companies will now have to rely on treaty claims to minimise withholding taxes on dividends, interest and royalties paid between them.

d. Tax Rulings and Clearances

There are only a limited number of clearances that are often relevant in respect of UK transactions. The most common relate to tax free treatment of share-for-share exchanges and de-mergers. The clearances solely relate to the requirement that the transactions have been undertaken for bona-fide commercial purposes and not as part of a tax avoidance scheme. They do not cover the technical aspects of the transactions.

Individual shareholders often seek clearance that their share transactions are capital in nature and not revenue.

15. MAJOR NON-TAX CONSIDERATIONS

Due regard should be given to the legal aspects that arise in the context of an M&A deal. Where mergers are concerned, it is recommended that a legal due diligence is performed in order to identify any potential risks that may materialise at the level of the target company (e.g. where the target has significant real estate property or operates in a highly-regulated sector). In the context of reorganisations, the legal aspects related to the transfer of employees should be carefully analysed and observed. General Data Protection Regulation (GDPR) obligations may also arise.



16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	0	6	0	
Algeria	0	7	10	
Antigua and Barbuda	0	20	0	
Argentina	0	12	3/5/10/15	[1]
Armenia	0	5	5	
Australia	0	0/10	5	[2]
Austria	0	0	0	
Azerbaijan	0	10	5/10	[4]
Bahrain	0	0/20	0	[7]
Bangladesh	0	7.5/10	10	[2]
Barbados	0	0	0	
Belarus	0	5	5	
Belgium	0	0/10	0	[5]
Belize	0	20	0	
Bolivia	0	15	15	
Bosnia-Herzegovina	0	10	10	
Botswana	0	10	10	
British Virgin Islands	0	20	20	
Brunei	0	20	0	
Bulgaria	0	0/5	5	[7]
Canada	0	0/10	0/10	[4]; [6]; [7]
Cayman Islands	0	20	20	
Channel Islands:	0			
Guernsey	0	0/20	0/20	[7]
Jersey	0	0/20	0/20	[7]
Chile	0	4/5/10	2/10	[2]; [6]
China (excludes Hong Kong)	0	10	6/10/20	[4]; [8]
Colombia	0	10	10	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Croatia	0	0/5	5	[7]
Cyprus	0	0	0	
Czech Republic	0	0	0/10	[11]
Denmark	0	0	0	
Egypt	0	15	15	
Estonia	0	0/10	0	[2]
Ethiopia	0	5	7.5	
Falkland Islands	0	0	0	
Faroes	0	0	0	
Fiji	0	10	0/15	[4]
Finland	0	0	0	
France	0	0	0	
Gambia	0	15	12.5	
Georgia	0	0	0	
Germany	0	0	0	
Ghana	0	12.5	12.5	
Greece	0	0	0	
Grenada	0	20	0	
Guyana	0	15	10	
Hong Kong	0	0	3	
Hungary	0	0	0	
Iceland	0	0	0/5	[11]
India	0	10/15	10/15	[2]; [6]
Indonesia	0	10	10/15/20	[7]; [8]
Ireland, Republic of	0	0	0	
Isle of Man	0	0/20	0/20	[7]
Israel	0	5/10	0	[2]
Italy	0	0/10	8	[6]
Ivory Coast (Côte d'Ivoire)	0	15	10	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Jamaica	0	12.5	10	
Japan	0	0/10	0	[10]
Jordan	0	10	10	
Kazakhstan	0	10	10	
Kenya	0	15	15	
Kiribati	0	20	0	
South Korea (Republic of Korea)	0	10	2/10	[8]
Kosovo	0	0	0	
Kuwait	0	0	10	
Kyrgyzstan	0	5	5	
Latvia	0	10	5/10	[8]
Lesotho	0	10	7.5	
Libya	0	0	0	
Liechtenstein	0	0	0	
Lithuania	0	0/10	5/10	[7]; [8]
Luxembourg	0	0	5	
Macedonia	0	0/10	0	[5]
Malawi	0	0/20	0/20	[3]
Malaysia	0	10	8	
Malta	0	10	10	
Mauritius	0	20	15	
Mexico	0	5/10/15	10	[7]
Moldova	0	5	5	
Mongolia	0	7/10	5	[2]
Montenegro	0	10	10	
Montserrat	0	20	0	
Morocco	0	10	10	
Myanmar	0	20	0	
Namibia	0	20	0/5	[4]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Netherlands	0	0	0	
New Zealand	0	10	10	
Nigeria	0	12.5	12.5	
Norway	0	0	0	
Oman	0	0	8	
Pakistan	0	15	12.5	
Panama	0	0/5/20	5	[7]
Papua New Guinea	0	10	10	
Philippines	0	10/15	15/20	[7]; [9]
Poland	0	0/5	5	[2]
Portugal	0	10	5	
Qatar	0	0/20	5	[7]
Romania	0	10	10/15	[4]
Russian Federation	0	0	0	
St. Kitts and Nevis (St. Christopher and Nevis)	0	20	0	
Saudi Arabia	0	0	5/8	[8]
Senegal	0	10	6/10	[8]
Serbia	0	10	10	
Sierra Leone	0	20	0	
Singapore	0	0/5	8	[2]
Slovak Republic	0	0	0/10	[4]
Slovenia	0	0/5	5	[7]
Solomon Islands	0	20	0	
South Africa	0	0	0	
Spain	0	0	0	
Sri Lanka	0	10	0/10	[9]
Sudan	0	15	10	
Swaziland	0	20	0	
Sweden	0	0	0	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Switzerland	0	0	0	
Taiwan	0	10	10	
Tajikistan	0	10	7	
Thailand	0	20	5/15	[9]
Trinidad and Tobago	0	10	0/10	[9]
Tunisia	0	10/12	15	[2]
Turkey (excludes North Cyprus)	0	15	10	
Turkmenistan	0	10	10	
Tuvalu	0	20	0	
Uganda	0	15	15	
Ukraine	0	5	5	
United Arab Emirates	0	0/20	0	[7]
United States	0	0/15	0	[11]
Uruguay	0	10	10	
Uzbekistan	0	5	5	
Venezuela	0	5	5/7	[7]
Vietnam	0	10	10	
Zambia	0	10	5	
Zimbabwe	0	10	10	



Footnotes

1	Royalties: 3% for news; 5% for copyright; 10% industrial; 15% other royalties.
2	Interest: Lower rate for loans from banks and financial institutions.
3	Interest and Royalties: Higher rate applies if recipient controls more than 50% of payer.
4	Royalties: Lower rate applies to copyright royalties.
5	Interest: 0% on loans between businesses.
6	Interest and Royalties: Lower rate applies to industrial, commercial royalties
7	Interest and Royalties: Specific additional conditions apply for lower rate.
8	Royalties: Lower rate applies for equipment royalties.
9	Royalties: Lower rate applies to films, TV, and radio.
10	Interest: Higher rate applies to certain profit related interest.
11	Interest: Specific conditions apply for higher rate.



17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

No.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Contact details for persons available to discuss UK tax matters (tax advisers / management, as relevant).
2	Tax Due Diligence	General	A current group structure chart, including all entities by full legal name, jurisdiction of incorporation and tax residence, entity type, class of shares, and ownership percentages.
3	Tax Due Diligence	General	A brief overview of each entities' activities (trading, holding, dormant).
4	Tax Due Diligence	General	An overview of how the Group's tax affairs are managed (corporation tax, VAT, payroll tax and any non-UK taxes).
5	Tax Due Diligence	General	Details of any risk rating that the UK group has received from HMRC including a copy of any HMRC risk review correspondence.
6	Tax Due Diligence	General	Confirmation whether a Senior Accounting Officer ("SAO") certification has been provided to HMRC for each financial year on a timely basis. If so, please provide a copies of these.
7	Tax Due Diligence	General	In relation to the corporate offence of failure to prevent the criminal facilitation of tax evasion ("CCO"), details of how this is managed and whether reasonable prevention measures have been implemented, e.g. risk assessment, communication and training, implementation of risk-based prevention procedures and monitoring. Please also provide details of how any findings have been addressed.
8	Tax Due Diligence	General	Confirmation whether a CbC notification has been made to HMRC and when this was made. Please provide a copy of the CbC report.
9	Tax Due Diligence	General	<p>Details of changes affecting the Group over the last six years, highlighting any:</p> <ul style="list-style-type: none"> (a) Acquisitions, disposals, mergers or other significant corporate transactions (b) Any material changes in the Group's shareholders in the past six years <p>Where applicable in respect of these transactions:</p> <ul style="list-style-type: none"> (i) Copies of any tax advice or clearances obtained (ii) Copies of any due diligence prepared in respect of any acquisitions or disposals (iii) Copies of any relevant sale & purchase agreements
10	Tax Due Diligence	General	Details of any loans to shareholders / directors, when the loans were advanced, the amounts, interest rate applied and details of any s455 tax charge paid.
11	Tax Due Diligence	General	Details of any balances with shareholders which will be settled prior to the proposed transaction.
12	Tax Due Diligence	General	Details of any tax planning schemes undertaken and any known areas of tax exposure.



No.	Category	Sub-Category	Description of Request
13	Tax Due Diligence	General	Copies of any significant agreements reached with tax authorities concerning the ongoing tax treatment of particular items or transactions.
14	Tax Due Diligence	General	Details of the principal historical mechanisms of cash repatriation / moving cash from subsidiaries to group companies, and / or shareholders, and any tax leakage which has arisen (e.g. withholding taxes).
15	Tax Due Diligence	General	<p>Please provide details of any tax payment deferrals in place (e.g. VAT, payroll taxes, corporation tax) as a result of recent responses to COVID 19 by HMRC and other tax authorities), i.e. any material amounts deferred and when they are expected to be paid.</p> <p>Details of any Coronavirus Job Retention Scheme funds received from HMRC. Please advise dates for which claims have been made, number of staff furloughed and total value of CJRS funding obtained? Has the company received an HMRC prompter letter? Did the company respond to the letter? Has the company taken professional advice on CJRS?</p>
16	Tax Due Diligence	Related party transactions	<p>Details of any transactions with related parties (e.g. directors, shareholders, group companies) including:</p> <p>(a) Detailed description of the calculation of the pricing (i.e. mark-up and basis of apportionment/charge) of intercompany transactions, e.g. loans, management charges, rental agreements, head office costs, IP etc.</p> <p>(b) Copies of any transfer pricing studies or APAs</p> <p>(c) Description of known exposures with respect to transfer pricing, including a description of any transfer pricing issues that have been the subject of correspondence with taxing jurisdictions and the status of these issues or a description of how they were resolved</p> <p>(d) Nature and location of the key value drivers in the business</p> <p>(e) Nature and location of any IP</p> <p>(f) The entity which bears the entrepreneurial risks and rewards</p> <p>(g) Location of the management of customer relationships</p>
17	Tax Due Diligence	Related party transactions	<p>Details of any group cash pool arrangement in place, including:</p> <p>(a) How it operates (notional or zero balancing)</p> <p>(b) The role of the UK entities (depositor, borrower, cash pool header)</p> <p>(c) The group benefit of the cash pool arrangement (i.e. how are the internal interest rates set) and how this is allocated to the cash pool participants</p> <p>(d) Any transfer pricing work undertaken to support the allocation as being arm's length</p>

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No.	Category	Sub-Category	Description of Request
18	Tax Due Diligence	Financing	<p>Details of the financing structure of the Group, e.g. external debt and significant related party loans.</p> <p>Copies of any tax advice received from the company's tax adviser or other analysis prepared in relation to the deductibility of interest expense, in particular the consideration of:</p> <p>(a) The corporate interest restriction ("CIR") (including a copy of the CIR return and supporting calculations)</p> <p>(b) Transfer pricing</p> <p>(c) Anti-hybrid rules</p> <p>(d) Other anti-avoidance provisions</p>
19	Tax Due Diligence	Financing	Details of any review carried out to assess whether the anti-hybrid legislation applies to the Group's financing, trading, or any other transactions, for example in relation to include any specific instruments/ transactions.
20	Tax Due Diligence	Financing	Matrix of intercompany and shareholder loans including the key terms of the loans and when the loans were advanced.
21	Tax Due Diligence	Withholding taxes	Details of any withholding tax incurred on the payment of interest on the senior loans, shareholder loans and management loans, and any intercompany loans. If withholding tax has not been paid, please provide details of the withholding exemption(s) applied.
22	Tax Due Diligence	Withholding taxes	A description of any withholding tax obligations on the payment of any royalties and details of any exemptions applied or any treaty clearances obtained.
23	Tax Due Diligence	Tax in the financial statements	Draft financial statements for the year ended FYXX, if available.
24	Tax Due Diligence	Tax in the financial statements	<p>The calculation of the corporation tax creditor/debtor balance in the latest financial statements. This should include (by entity, if consolidated):</p> <p>(a) The balance brought forward</p> <p>(b) Calculation of the corporation tax charge for the period</p> <p>(c) Any payments made to / repayments received from HMRC in the period</p>
25	Tax Due Diligence	Tax in the financial statements	The calculation of the deferred tax asset / liability at in the latest financial statements.
26	Tax Due Diligence	Tax in the financial statements	Details of any provisions for potential UK tax liabilities recorded by the Group on its latest balance sheet.

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No.	Category	Sub-Category	Description of Request
27	Tax Due Diligence	UK corporation tax	Confirmation whether all corporation tax filings have been filed, and all payments made, within the statutory time limits. Details of any returns filed late, amended returns filed, or payments made late.
28	Tax Due Diligence	UK corporation tax	Copies of corporation tax returns and computations for all open accounting periods (or the last three accounting periods, if longer) together with a copy of your adviser's transmittal letter/email (if any) setting out their assumptions and representations relied on in preparing the computations, and their recommended areas of focus for the future.
29	Tax Due Diligence	UK corporation tax	Draft corporation tax computations for the year ended FYXX, if available.
30	Tax Due Diligence	UK corporation tax	Details of any recent, ongoing or pending HMRC enquiries including copies of any correspondence with HMRC.
31	Tax Due Diligence	UK corporation tax	Details of any group payment arrangement in place and / or any payments made by UK companies for group relief claims.
32	Tax Due Diligence	UK corporation tax	Have the entities with carried forward tax losses been subject to: (a) Any major change in the nature or conduct of their trade? (b) Has the scale of the company's activities become small or negligible? If so, when did this occur?
33	Tax Due Diligence	UK corporation tax	Details of any transactions where a tax charge was deferred or tax relief given which is subject to a claw back or recapture. For example where gains have been held or rolled over.
34	Tax Due Diligence	UK corporation tax	Details of any intragroup transfers of assets to / from any UK group companies in the previous six years, including details of the assets transferred, the basis on which they were transferred and the relevant tax treatment.
35	Tax Due Diligence	UK corporation tax	Where claims have been made for Research & Development tax relief, details of: (a) The work and procedures undertaken to identify qualifying expenditure for these claims, including copies of any tax advice and supporting documentation for the claims for R&D tax relief (b) Details of any cash refunds for R&D tax credit relief (i.e. amounts, applicable accounting periods and when the cash was received) (c) How the group qualifies for the scheme for Small and Medium sized Enterprises (d) Any advance assurance sought, and received, from HMRC in relation to the claims
36	Tax Due Diligence	UK corporation tax	Where the Group has applied the Patent Box regime, details of the work undertaken to determine (i) whether the qualifying conditions have been met, and (ii) the relevant IP income, and a copy of any internal supporting documentation or advice received in respect of this.

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No.	Category	Sub-Category	Description of Request
37	Tax Due Diligence	UK corporation tax	Details of any permanent establishments (for tax purposes) of the Group outside of the country of incorporation including details of the Group's controls and procedures in managing permanent establishment risks.
38	Tax Due Diligence	UK corporation tax	Details of any exemptions under the UK CFC rules applied to the group's non-UK subsidiaries and a copy of any advice received in respect of this.
39	Tax Due Diligence	VAT	Details of the VAT registration status of the UK entities and details of any VAT grouping arrangements. If applicable, a copy of the VAT group certificate which shows the list of members.
40	Tax Due Diligence	VAT	Details of any registrations for VAT, GST, sales tax, or similar tax anywhere other than the country of incorporation of each entity.
41	Tax Due Diligence	VAT	Confirmation whether all VAT returns and other VAT filings (e.g. EC Sales Lists and Intrastat Supplementary Declarations) have been submitted, and all payments have been made, within the statutory time limits for the past four years. Details of any VAT returns and/or VAT payments not submitted to HMRC by the relevant deadline over the past four years.
42	Tax Due Diligence	VAT	Copies of the four most recent VAT returns submitted to HMRC and supporting calculations for each UK VAT registered entity.
43	Tax Due Diligence	VAT	Details of any VAT audits, assessments, penalties, interest, or surcharge liability notices received in the past four years or known to be pending.
44	Tax Due Diligence	VAT	Details of the type and nature of all supplies made and how these are treated for VAT purposes (e.g. standard rated, zero-rated, exempt, outside the scope).
45	Tax Due Diligence	VAT	Details of any partial exemption special method agreed with HMRC.
46	Tax Due Diligence	VAT	Confirmation whether each VAT registered company has blocked VAT on third-party entertaining and/or car hire where appropriate within the past four years.
47	Tax Due Diligence	VAT	Confirmation whether the Group has incurred VAT in relation to buying shares or goodwill within the past four years.
48	Tax Due Diligence	VAT	Details of any services provided over the internet, or via other electronic means, to non-business consumers in any EU member state, and the applicable VAT treatment.
49	Tax Due Diligence	VAT	Confirmation whether all supplies between VAT group members (if applicable) are disregarded for VAT purposes, including transactions between establishments located in different countries which belong to the same legal entity. If not, please provide details.
50	Tax Due Diligence	VAT	Details of how services are treated if supplied to a customer belonging in another EU member state who has not provided a VAT registration number.
51	Tax Due Diligence	VAT	Details of the process for obtaining and retaining evidence to support zero rating of exports and dispatches.

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No.	Category	Sub-Category	Description of Request
52	Tax Due Diligence	VAT	Details of how dispatches are treated if supplied to a customer who has not provided a VAT registration number.
53	Tax Due Diligence	VAT	Details of any structures which have been implemented which are intended to improve VAT cash-flows.
54	Tax Due Diligence	VAT	Details of any special VAT accounting schemes used, e.g. cash accounting, retail schemes, second margin scheme, etc.
55	Tax Due Diligence	VAT	Details of any land options to tax in place currently or revoked during the past four years. Details of any land or buildings sold or let during the past four years, including any transactions between related parties, and the VAT treatment applied.
56	Tax Due Diligence	VAT	Has the business taken any VAT advice with regard to Brexit planning and how it will potentially affect the business? Please provide details of any steps taken in this regard.
57	Tax Due Diligence	VAT	Does the business have a Making Tax Digital (MTD) enabled software for the submission of its VAT returns? If not, please state what steps are being taken in order to be compliant with MTD.
58	Tax Due Diligence	Employer taxes	Details of which UK companies operate a payroll.
59	Tax Due Diligence	Employer taxes	Confirmation whether all (or at least for the previous six tax years) relevant payroll tax/NIC and RTI filings have been submitted, and payments of both tax and NIC, have been made in a full and timely manner.
60	Tax Due Diligence	Employer taxes	Confirmation of what, if any, benefits are included on employees P11Ds.
61	Tax Due Diligence	Employer taxes	Details of the expense policy - what expenses are reimbursed by the Group to employees/directors, how is it treated for tax purposes and what is the approval policy?
62	Tax Due Diligence	Employer taxes	Confirmation whether all expenses / benefits not reported on forms P11D (or covered by a valid dispensation prior to April 2016) have been subject to payroll taxes.
63	Tax Due Diligence	Employer taxes	Details of any PAYE settlement agreement (PSA) including whether all filings and payments have been submitted in a full and timely manner.
64	Tax Due Diligence	Employer taxes	Details of any control visits, audits or compliance checks by HMRC and copies of any relevant correspondence, including a summary of the issues and liabilities arising (noting amounts where material).
65	Tax Due Diligence	Employer taxes	Is the Group subject to the apprenticeship levy?



No.	Category	Sub-Category	Description of Request
66	Tax Due Diligence	Employer taxes	<p>Details of any termination payments made in the last six previous tax years including:</p> <p>(a) Gross amounts</p> <p>(b) How they have been taxed</p> <p>(c) The nature and the reasons why the termination arose, and whether they included PILONs</p> <p>(d) Where any amounts have been untaxed as "ex-gratia payments" under the £30k threshold, how was this calculated and do all employees terminated receive this amount?</p> <p>(e) Copies of the settlement agreements</p> <p>(f) Has the Group received any legal or tax advice in this area and if so, please provide details</p>
67	Tax Due Diligence	Employer taxes	Does the Group operates an employee benefit trust or any other pooling vehicle/third party vehicle? If so, please confirm the purpose of such vehicle, what assets are currently held within it, and what benefits have been provided to employees and directors to date (e.g. any loans made historically).
68	Tax Due Diligence	Employer taxes	Details of any long term (>12 month) secondments of UK employees abroad.
69	Tax Due Diligence	Employer taxes	Details of any employees seconded to the UK from group companies and how they have been treated from an employment tax perspective, including details of any special arrangements entered into with HMRC, including any non-UK employees that work in the UK on business trips.
70	Tax Due Diligence	Employer taxes	Confirmation that the Group has no employees nor any directors or officers who are not UK resident or who might be considered to have dual residency.
71	Tax Due Diligence	Employer taxes	Confirmation that all employees' and directors' full salaries and bonuses are remunerated through the payroll. Where this is not the case, please provide details of any other individuals who provide services for the Group and are paid outside of the payroll.



No.	Category	Sub-Category	Description of Request
72	Tax Due Diligence	Employer taxes	<p>Where the Group does engage/has engaged with self-employed contractors directly in the previous six tax years, please provide:</p> <p>(a) The total amount paid gross to self-employed individuals in the last four years</p> <p>(b) Details of the procedures undertaken to confirm the individuals' self-employed status</p> <p>Where the Group engages contractors via limited companies, please confirm whether:</p> <p>(a) The relevant engagement letters are addressed to individuals or companies (also whether these are personal service companies or umbrella companies), and invoices are issued by individuals or companies?</p> <p>(b) All of the contractors' limited companies are UK companies or provide details of any payments made to offshore companies?</p> <p>(c) Any contractors provide their services via managed service companies and in these instances whether the company directly or indirectly encouraged any individuals to provide their services via managed service companies?</p> <p>Details of any payments made gross to office holders, noting where this relates to (i) office holder duties, and (ii) consultancy services.</p> <p>In relation to the above:</p> <p>(i) What services have they performed for the Group?</p> <p>(ii) How are they paid for their services (e.g. hourly rates, retainers, etc)?</p> <p>(iii) How long have they performed these services?</p> <p>(iv) Are any employees providing similar services as the self-employed contractors and the rationale why they are self-employed contractors?</p> <p>(v) How often do they perform services (and do they have jobs elsewhere)?</p> <p>(vi) Has the Group received any legal or tax advice in this area? If so, please provide details.</p> <p>(vii) What consideration has been made to date in relation to the legislative changes to off-payroll workers that will come into place from April 2020?</p>



No.	Category	Sub-Category	Description of Request
73	Tax Due Diligence	Employer taxes	<p>Construction Industry Scheme, confirmation whether:</p> <p>(a) The / any company has never been required to operate under any of the provisions of the Construction Industry Scheme (CIS) at any time and has at no time been a contractor or sub-contractor</p> <p>(b) The / any company has never spent more than £1 million on average annually in any three year period on construction or building work</p> <p>(c) The / any company has at all times properly operated under the provisions within the CIS; carrying out timely verifications of sub-contractors and making proper and appropriate deductions from payments made to them</p> <p>(d) The / any company has applied and obtained gross payment status and has this ever been challenged because of a poor compliance record</p>
74	Tax Due Diligence	Employer taxes	Details of any special arrangements or agreements with HMRC.
75	Tax Due Diligence	Employer taxes	Details of any transaction bonuses that will be paid on this transaction. Does the Group intend to deduct these payments (and employer NIC) for corporation tax purposes?
76	Tax Due Diligence	Employment related securities	Do any of the companies in the group operate any share or share option incentive plans for employees and have any employees acquired shares in the Group under any previous plans or arrangements operated by the Group? Including any HMRC tax-advantaged share schemes (CSOP/SAYE/SIP).



No.	Category	Sub-Category	Description of Request
77	Tax Due Diligence	Employment related securities	<p>Details of all transactions involving the acquisition and disposal of securities (including shares, loan notes and partnership interests)(in any Group entity, not just Topco) by employees/directors (including NEDs) (current, former and prospective) in the last six tax years, including:</p> <p>(a) A schedule of the shareholdings by individual, date when the shares were acquired, and the acquisition price</p> <p>(b) A schedule of any share disposals by individual, date when the shares were disposal of, and the sale price</p> <p>(c) Details of how the acquisition/sale price was determined and confirmation whether this was considered to be market value</p> <p>(d) A copy of any internal or external valuation prepared to support the market value of the securities at the time of acquisition/disposal. Please provide copies of correspondence with HMRC in regard to the valuation of securities on acquisition/disposal</p> <p>(e) Confirmation whether the shares fall within the restricted securities regime, and whether any of the restrictions have subsequently been lifted</p> <p>(f) Confirmation whether the shares are treated as readily convertible assets (are there (or have there been in the past) any trading arrangements in place where employees can sell their shares?)</p> <p>(g) Confirmation whether elections were made under s431 ITEPA 2003 within 14 days of the share acquisitions</p> <p>(h) Confirmation whether any shareholders have provided a tax indemnity to the employing company in respect of any PAYE / employee NIC liabilities on the share acquisition</p> <p>(i) Confirmation whether the employing company has reported all employment related securities to HMRC on Form 42 (for periods up to April 2014) and the online employment related securities returns (for subsequent periods) on a timely basis (i.e. by 6 July each year) for all relevant years</p> <p>(j) If any employees/directors who hold/has held securities are non-UK tax resident please specify.</p>



No.	Category	Sub-Category	Description of Request
78	Tax Due Diligence	Employment related securities	<p>Details of any unapproved share options issued to employees/directors (including NEDs), including:</p> <p>(a) Copies of share option plan rules or ancillary documentation</p> <p>(b) A schedule of the share options granted, the date when the options were granted, the exercise price, and any share options which have been exercised</p> <p>(c) Where any share options have been exercised, confirmation that any option gains were subject to PAYE income tax and employer NIC withholding, and an employer NIC tax liability for the employing entity. Please provide copies of valuation work undertaken to support the position.</p> <p>(d) Confirmation whether the employing company has reported all employment related securities to HMRC on Form 42 (for periods up to April 2014) and the online employment related securities returns (for subsequent periods) on a timely basis (i.e. by 6 July each year) for all relevant years</p> <p>(e) Confirmation if the employees have entered into NIC agreements or elections to pass the employers NIC to the employee, and if so, please provide us with a copy.</p>
79	Tax Due Diligence	Employment related securities	<p>Details of any EMI share option schemes, including:</p> <p>(a) Copies of share option plan rules or ancillary documentation</p> <p>(b) A schedule of the EMI share options granted, date when the options were granted, the exercise price</p> <p>(c) Confirmation whether the qualifying conditions (set by HMRC) of the EMI share option scheme have been satisfied to date, there have been no disqualifying events, and there are not expected to be any disqualifying events before the proposed transaction</p> <p>(d) Confirmation that the exercise price of the EMI share options is not less than the actual market value of the shares at the time that the options were granted, and a copy of any valuation prepared to support this</p> <p>(e) Confirmation whether the group has requested and received assurance from HMRC that it met the qualifying conditions of the EMI scheme when the options were granted</p> <p>(f) Confirmation whether the employing company notified HMRC of the grant of the options within 92 days from the date of the grant (Form EMII)</p> <p>(g) Confirmation whether the option holder agreements include a tax indemnity from the option holder to the employing company in respect of any PAYE / employee NIC liabilities which may arise on the share acquisition</p> <p>(h) Confirmation whether the employing company has reported all employment related securities to HMRC on Form 42 (for periods up to April 2014) and the online employment related securities returns (for subsequent periods) on a timely basis (i.e. by 6 July each year) for all relevant years</p> <p>(i) If any options have been exercised, confirmation whether elections were made under s431 ITEPA 2003 within 14 days of the share acquisitions</p>



No.	Category	Sub-Category	Description of Request
80	Tax Due Diligence	Employment related securities	Confirmation whether the conditions of the safe harbour under the Memorandum of Understanding (“MoU”) negotiated between HMRC and the British Venture Capital Association (“BVCA”) were satisfied for the shares acquired by management.
81	Tax Due Diligence	Employment related securities	<p>Details of any ESS scheme, including:</p> <p>(a) A schedule of the ESS shares acquired and a copy of the ESS agreement</p> <p>(b) Details of the employment rights given up and confirmation that no consideration was paid for the shares</p> <p>(c) A copy of any valuation prepared for the ESS shares and any correspondence with HMRC to agree the valuation</p> <p>(d) Confirmation whether all requirements for the shares to qualify for ESS tax treatment have been satisfied</p> <p>(e) Confirmation whether elections were made under s431 ITEPA 2003 within 14 days of the share acquisitions</p> <p>(f) Confirmation whether the employing company has reported the issuance of the ESS shares to HMRC by way of the employment related securities online filing on a timely basis.</p>
82	Tax Due Diligence	Employment related securities	Please provide copies of any non-statutory clearances/correspondence with HMRC relating to the operation of any employee share incentive arrangements.
83	Tax Due Diligence	Employment related securities	Have any awards been granted or settled by any other third parties such as shareholders?
84	Tax Due Diligence	Employment related securities	Details of any other incentive arrangements operated by the Group that are not straight forward cash bonus plans or benefits reported on form P11D.



FOR MORE INFORMATION CONTACT:



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